Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-925

Edna I. Baker and Roger L. Baker,

APPELLANTS

vs.

Oregon State Bar, Albert R. Musick, Holger M. Pihl, Claire Tri, Robert Briggs, John R. and Jacqueline C. Skourtes, William Hurley, James E. Auxier, Estate of Paul M. Reeder, Paul M. Reeder, and Frank Porcelli jr.,

APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE ~~STATE OF~~ OREGON Ct App

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JURISDICTIONAL STATEMENT

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December 11, 1979

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ORGANIC LAW OF THE STATE OF OREGON
Compiled and annotated by M.P.Deady
1845 - 1864
Henry L. Pittock, State printer, 1866
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

Edna I. Baker, et al,_____*Appellants*,

vs.

Albert R. Musick, et al,_____*Appellees*.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellants Edna I, Baker and Roger L. Baker file this statement of basis for Supreme Court jurisdiction to review the FINAL ORDERS entered by the Oregon Supreme Court in SC 26295 and SC 26310, and should execise jurisdiction herein.

OPINIONS BELOW

The Oregon Supreme Court refused to review or to provide an opinion on either the civil or the probate matter. Plaintiffs suggest that it is difficult for the State Judiciary to justify removing Mrs. Baker as personal representative of her father's estate, while she was enforcing contract terms which the State Supreme Court had affirmed in GINDHART vs. SKOURTES (1975) 271 Or 115, 530 P2d 827.

GROUNDS FOR JURISDICTION OF SUPREME COURT

Jurisdiction of this Court is invoked under the provision of Title 28, United States Code, Section 1257(2), wherein, a state's highest court has ruled against a challenge to the unconstitutionality of a state statute, ORS 9.160, and the related ORS 9.320, as hereinafter fully set forth in App C-2.

The final orders in these two cases were issued on September 12, 1979, and timely notice of appeal was served Dec. 10, 1979. Dismissal orders had been issued on September 5, 1979, which had caused appellants to serve premature Appeal notices on Sept. 17, 1979, as the later orders had not been received.

This appeal arises from an action to recover damages as a result of the defendants' abuses of process, and to recover property taken as a result of the State of Oregon having changed state law in a manner which impaired plaintiffs' right to an Obligation of a Contract, in violation of Article I, Section 10 of the United States Constitution.

Plaintiffs contend that this Court has never been called upon to resolve

the particular questions brought in this case, although, certain cases will support the elements of these particular questions as follows:

a. contract impairment, and police powers; ALLIED STRUCTURAL STEEL CO. vs. SPANNAUS (1978) 438 US 234,242,247, 57 LEd 2d 727, 98 SCt 2716;

BROWN-CRUMMER INV. CO. vs. TOWN OF NORTH MIAMI (1935) 11 FSupp 73,74;

b. separation of powers;

SWEEZY vs. NEW HAMPSHIRE (1957) 354 US 234,255, 1 LEd 2d 1311,1327, 77 SCt 1203;

DAGWELL vs. THORNTON (1953) 199 Or 8, 259 P2d 125;

c. judicial act as state act;

BARROWS vs. JACKSON (1952) 346 US 249,254-255, 97 LEd 1586, 73 SCt 1031

QUESTIONS PRESENTED

1. Whether Impairment of Contract clause is prohibitive of Judicial Legislation, in light of Separation of Powers mandate ?

2. Whether state officers may deprive plaintiffs of State Constitutional guarantees, in violation of Federal Equal Protection Clause?

STATEMENT OF THE CASE

This matter is an appeal from contract interference brought in: the probate court (Washington County Circuit Court # E1533) of the State of Oregon, where review was requested and refused in the State Court of Appeals,# CA12109, and in the State's highest Court, # SC26295; and by civil action in the Circuit Court of Multnomah County for the State of Oregon, # A7708-12051, where review was requested, and refused in the State Appeals Court,# CA13792, and the State Supreme Court, # SC26310.

The Impairment of Contract issue was brought by plaintiffs in their first complaint of the civil action, although the state courts have never responded to that issue.

The probate appeal was brought with an appended copy of the civil complaint to show that the probate judges (as defendants) and the replacement personal representative (Robert Briggs) were well aware of the allegations.

Each of the dismissals by the state courts were an affirmation, or an acquiesence, of the contract impairment.

The original problem began as probate

of an estate, where Mrs. Baker is the sole legatee, testamentary executrix, and subsequently the personal representative.

The estate was the legacy of Mrs Baker's father, Fritz Gindhart, and the major asset was a land sale contract which had been ordered to be specifically performed. see GINDHART vs SKOURTES (1975) 271 Or 115, 530 P2d 827.

The sequence of events were as follows:

1. The contract buyer was more than a year in default on his payments after the mandate was issued;
2. The estate attorney, James E. Auxier, had to be fired as he had collaborated with the judge to deprive Mrs. Baker of statutory rights;
3. The buyers' attorney, William Hurley threatened to have Mrs. Baker removed as personal representative, although he had no just cause;
4. The probate judge, defendant Pihl, swore to a false affidavit, so that he could act to remove Mrs. Baker from representing the estate;
5. The named defendants conspired to remove Mrs. Baker as personal representative of her father's estate:

(a.) so the buyers could avoid the default clause of the contract;
(b.) so the probate judge could award summary determinations against the estate without full plenary trials.

6. The Multnomah County Circuit Court allowed each and every one of the defendants' motions to dismiss, or to strike, without a trial of any issues which had caused plaintiffs' damages.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial questions, beginning with the right of contract, which is a basic constitutional guarantee.

While it seems to be true that the later rulings seem to disfavor applying the contract impairment clause to a judicial act, this case is not that simple. Appellants understand the reasoning behind contract adjudication, as necessary to resolve a conflict between parties to the contract. The first distinction in this case is that the contract had been adjudicated, and found to be lawful. The second distinction in this case is that the probate court, which acted to damage plaintiffs, had no authority to interfer with Mrs. Baker's right to enforce the specific terms of the contract.

Plaintiffs contend that the ruling in SWEEZY vs. NEW HAMPSHIRE prohibits a state court from blatant invasion of the Separation of Powers clause of the United States Constitution. This guarantee is in the Oregon State Constitution also, as Art. III section 1, which is fully set out in App C-1 The Legislative power, which the probate court had invaded, is the right to represent one's own interests in court. This is provided to the public by Oregon State Law, ORS 9.160, and the related ORS 9.320, set out in App C-2 ORS 9.320 is one of those prime rights, as it is organic law, and it says, in part:

> Any action, suit, or proceeding may be prosecuted or defended by a party in person, - - - . (see App C-2)

(Oregon Civil Code chapter 14, title I, section 1001 - Oct 11,1862) Deady pp 397-398, see Authorities table of index.

Plaintiffs submit that any court which attempts to take away organic rights, which are considered to be beyond legislative powers in some holdings, has certainly overstepped the Separation of Powers clause. There is not even a question of legislative intent to consider.

Plaintiffs submit that this judicial act, by defendant judge Pihl, which in fact legislates amendment to ORS 9.160, is repugnant to Article I, section 10 of the United States Constitution. This ruling would be consistent with other holdings that a judge is a state official, and that a judge is prohibited from violating a constitutional mandate.

The second question which plaintiffs bring to this court is, must the state courts provide the right of recourse for damage as a result of illegal acts of persons, as mandated by Oregon State Constitution Article I, section 10; and must the courts provide jury trials as mandated by Oregon State Constitution Article I, section 17 ?

Plaintiffs contend that the courts have deprived them of the foregoing rights in a biased and unequal manner. That the Oregon State Courts have a mysterious and constantly shifting set of rules which they apply to persons appearing for themselves, and even to young and inexperienced attorneys.

CONCLUSION

For the reasons stated above, appellants submit that this appeal brings before the court an issue which has never been framed to test the intent of the United States Constitution. It is also true that the issue of Equal Protection of the Law is central to the acts of the defendants in this matter, and should be considered concurrently.

Article I, section 10 of the United States Constitution stands by itself as a JURISDICTIONAL MANDATE prohibiting contract impairments by the state.

The issue of Equal Protection is mandated by the 14th Amendment to the United States Constitution, and is enforceable under the civil rights acts such as Title 42, United States Code, Section 1983.

These are important Contract Impairment and Discrimination allegations, which require plenary consideration, with briefs on the merits and oral argument for their resolution.

ORDERS OF THE STATE SUPREME COURT

ON THE CIVIL APPEAL - SC 26310

September 12, 1979

Re: CA # 13792

The Supreme Court has today considered and denied your motions dated June 7, 1979, filed here June 8, in the above entitled matters

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September 7, 1979

Re: CA # 13792, SC 26310

The Supreme Court on September 5, 1979, denied Appellants' Petition for review in the above entitled matter

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July 12, 1979

Re: CA # 13792, SC 26310

Pursuant to Rule of Procedure 10.10 the Court of Appeals has considered the Petition for Review in the above case and has on July 10, 1979, decided not to rehear the matter or change its decision. Therefore, the Supreme Court will proceed to determine whether to grant review. No mandate can issue until the Supreme Court has completed its review of the petition.

ORDERS OF THE STATE SUPREME COURT

ON THE PROBATE APPEAL - SC 26295

September 12, 1979

Re: CA # 12109

The Supreme Court has today considered and denied your motions dated June 7, 1979, filed here June 8, in the above entitled matters.

September 7, 1979

Re: CA 12109, SC 26295

The Supreme Court on September 5, 1979, denied Appellant's Petition for Review in the above entitled matter.

June 26, 1979

Re: CA 12109, SC 26295

Pursuant to Rule of Procedure 10.10 the Court of Appeals has considered the Petition for Review filed in the above case and has today, decided not to rehear the matter or change its decision. Therefore, the Supreme Court will proceed to determine whether to grant review. No mandate can issue until the Supreme Court has completed its review of the petition.

ORDERS OF THE STATE APPEALS COURT

ON THE CIVIL APPEAL - CA 13792

(CAPTION)

Appeal from MULTNOMAH County
Circuit Court
No. A770812051
CA 13792

The Court having considered respondents' motions to dismiss the above-entitled appeal as to respondents Musick, Pihl, Tri, Briggs, The Oregon State Bar and Porcelli, and the Court on its own motion on May 17, 1979, ordering that the appeal be dismissed as to the other respondents, Skourtes, Hurley, Reeder, the Estate of Reeder, and Auxier, and the Court being fully advised:

IT IS HEREBY ORDERED that said motions are allowed and said appeal is dismissed. The casue is remanded to the court below. This mandate shall there be entered as final order in this matter.

It is FURTHER ORDERED that respondents Musick, Pihl and Tri recover from appellants costs and disbursements in this Court taxed at $90, and that respondents Oregon State Bar recover from appellants costs and disbursements in this court taxed at $90, and that respondent Porcelli recover from appellants costs and disbursements in this court taxed at $90.

ENTERED at Salem, Oregon, May 17, 1979.
ISSUED: JUN 14 1979

June 12, 1979

Re: CA 13792

The Court of Appeals has today denied the appellant Baker's objections to the respondent Porcelli's cost bill filed in the above-entitled matter. Costs will be allowed to respondent Porcelli and to all other respondents who filed motions to dismiss. Our mandate will provide accordingly.

May 17, 1979

Re: CA 13792

The Court of Appeals has today allowed the motions to dismiss filed on behalf of the respondents Musick, Pihl, Tri, Briggs, Oregon State Bar, and Porcelli in the above entitled Matter, and has today on its own motion ordered that the appeal be dismissed as tc the other respondents This letter constitutes the order of the Court-of Appeals. A mandate will issue in due course.

ORDERS OF THE STATE APPEALS COURT

ON THE PROBATE APPEAL - CA 12109

(CAPTION) Appeal from WASHINGTON County
Circuit Court
No. E1533 CA 12109

This cause having come on to be heard on appeal and having been duly submitted and considered and the Supreme Court having de nied review on September 5, 1979:

IT IS HEREBY ADJUDGED and ORDERED that the decision entered below in this caues is affirmed.

IT IS FURTHER ORDERED that respondent recover from appellant costs and disbursements in this court in the amount of $ -0-

The cause is returned below for further proceedings pursuant to law and the opinion and order of the court entered May 14,1979.

ISSUED at Salem, Oregon: SEP 14 1979

IN THE SUPREME COURT OF THE STATE OF OREGON

Edna I. Baker, etc., Appellants — Multnomah Co.
vs. — A7708-12051
Albert R. Musick, etc., Respondents. — CA 13792
SC 26310

In the Matter of the Estate of FRITZ GINDHART dec'd, Edna I. Baker Appellant, — Washington Co.
vs. — E1533
Robert Briggs Respondent. — CA 12109
SC 26295

NOTICE OF APPEAL

Appellants in the above entitled matter hereby give notice of appeal into the United States Supreme Court as provided by Title 28, United States Code, Section 1257(2), wherein, the state's highest court has ruled against a challenge to the repugnancy of ORS 9.160 and related ORS 9.320 to the Ccntract Impairment Clause, ARTICLE I, SEC. 10 of the UNITED STATES CONSTITUTION.

Appellants hereby request the total records be prepared and certified, in accordance with Rule 12 of the United States Supreme Court, so that appeal may be had.

The final orders in these two cases were issued on September 12, 1979, but were not received by appellants until after timely notice of appeal was served on Sept. 17, 1979, in respect to the Sept. 5, 1979, dismissals.

Dec. 10,1979

EDNA I. BAKER, Appellant

AFFIDAVIT OF SERVICE

STATE OF OREGON)
Multnomah County) ss.

I, Edna I. Baker, Appellant in the above entitled matter, after being duly sworn, depose and say that I served a true and complete copy, as certified by me, of REQUEST FOR DESIGNATION and CERTIFICATION OF RECORD, and the NOTICE OF APPEAL IN THE MATTER, upon the following persons at their regular addresses:

Richard L. Caswell
Asst Atty General
106 St Off Building
Salem, Or 97310

Keith W. Griffen
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Hillsboro, Or 97123

Robert Briggs
2545 Terwilliger Blvd.
Portland,Or 97201

Circuit Court
Multnomah Co.
Portland, Or 97204

Oregon State Supreme C.
Supreme Court Building
Salem, Or 97310

on Dec. 10 ,1979 by depositing the same in the United States Post Office in Portland, Oregon with first class postage prepaid in accordance with Supreme Court Rules 33(1) & 33(3c)

Edna I. Baker,Appellant

Notary Public for Oregon
My Commission expires.....

OREGON CONSTITUTION CITED

Article I, BILL OF RIGHTS

SECTION 10:
No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.—
(New provision Sept. 18,1857-Deady, p.98)

SECTION 17:
In all civil cases the right of trial by jury shall remain inviolate.—
(old Art.I,Sect.2,Organic Law-Deady p. 59)

Article III, DISTRIBUTION OF POWERS

SECTION 1
The powers of the Government shall be divided into three seperate (sic) departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.—
(old Art.I,Sect.6,Organic Law-Deady p. 63)

Article IV, LEGISLATIVE DEPARTMENT

SECTION 1

(1) The Legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in a Legislative Assembly, consisting of a Senate and a House of Representatives.
(following omitted)

OREGON STATUTES CITED

9.160 - Vol 1, p.74, Oregon Revised Statutes 1953 Edition, rev. 1977

Except for the rights reserved to litigants by ORS 9.320 to prosecute or defend a cause in person, no person shall practice law or present himself as qualified to practice law unless he is an active member of the Oregon State Bar.

9.320 - Vol 1, p.75, Oregon Revised Statutes 1953 Edition, rev. 1977

Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, unless otherwise specifically rovided by law. Where a party appears by attorney, the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party, except as provided in ORS 9.310.
Amended by 1975 c. 451§171
(old Oregon Civil Code chapter 14, Title I, Section 1001, October 11, 1862-Deady p. 397-398)